IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2079 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI SAVJIBHAI PATNI & 1 - Appellant(s)
Versus
JITUBHAI MANEKRAM JADEJA & 2 - Defendant(s)

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Appearance :
PARTY-IN-PERSON for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2.
MR SHALIN N MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 30/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and award dated 16.8.2002 of the Motor Accident Claims Tribunal, Ahmedabad in MAC Petition No.1234 of 1992 awarding only Rs.1,08,000/- to the parents of a 19 year young man who died in a motor vehicle accident. The appeal is for enhancement of the compensation amount.

2. The appellants' son, aged 19 years, was engaged in the business of selling vegetables. On 4.4.1992, the appellants' son had gone to a nearby village for purchasing vegetables, but he did not return home even on the next day. The appellants made inquiries and ultimately lodged a complaint with the police on 11.4.1992. Advertisements were also given on Doordarshan. Ultimately on 22.4.1992 the police informed the appellants that an accident had taken place where a dead body was found and taken to the Civil Hospital. The funeral was also performed by the police. From FIR Exh.62, it transpired that the name of the boy was written on the right hand and that is how the police could identify the deceased. The police accordingly informed the appellants that the deceased was the son of the appellants. The appellants filed a claim petition for compensation of Rs.5 lakhs.

3. The Tribunal held that the accident in question took place because of rash and negligent driving of rickshaw bearing No. GJ-1-U-231 which was

insured by respondent No.3 – Insurance Company. The rickshaw did not have lights and the driver knocked down the deceased who was standing on the road.

In absence of any appeal by the original opponents, no further discussion on the question of negligence is required.

4. On the question of compensation, the Tribunal assessed the income of the deceased as only notional income of Rs.1,500/- per month on the ground that the deceased was handicapped. The Tribunal then deducted two-third amount on the ground that the deceased was unmarried and accordingly assessed the loss of dependency benefit at only Rs.500/- per month i.e. Rs.6,000/- per annum. Applying the multiplier of 18 years, the Tribunal assessed the loss of dependency benefit at Rs.1,08,000/- and awarded that sum as the final compensation together with interest at the rate of 9% per annum from the date of the claim petition till realization.

5. The appellants are not represented by any Advocate, but appellant No.1, the father of the deceased, has argued the appeal as a party-in-person. We have accordingly heard appellant No.1 and Mr Shalin Mehta, learned advocate for respondent No.3-Insurance Company.

6. The case of the claimants was that the deceased was earning Rs.2,500/- per month. The

deceased was a 19 year old boy. Claimant No.1 himself is engaged in the business of selling vegetables and we have no difficulty in accepting the claimants' case that the deceased was also engaged in the business of selling vegetables.

In fact, the finding of the Tribunal that the deceased was a handicapped person itself is vulnerable because that was the inference which the Tribunal had drawn in view of the FIR and the panchnama. The material on record, however, does not contain any such material to substantiate such an inference being drawn that the deceased was a handicapped person before the accident. The very fact that the deceased had gone to another village for purchasing vegetables during night hours would indicate that the deceased was an able bodied person who was in a position to take care of himself and to move around without any support. In this view of the matter and also considering the fact that the boy aged 19 years would ordinarily help the father in the business of selling vegetables, we are of the view that the Tribunal ought to have assessed the income of the deceased on the date of the accident at Rs.2,500/- per month.

Considering the fact that the deceased was only 19 years on the date of the accident, the Tribunal ought to have considered the potential rise in the income of the deceased and ordinarily such rise is to be taken at 50%. Hence, the potential

income of the deceased ought to have been assessed at Rs.3,750/-.

7. The party-in-person has argued that the Tribunal has erred in deducting two-third amount as the amount the deceased would have spent on himself and his family. It is submitted that staying in a joint family, the deceased would not have spent two-third amount on himself and his family and the deceased would have spent only 50% of his income on himself and his family even after the deceased would have got married.

8. We find considerable substance in the submissions made by appellant, party-in-person. The deceased was aged 19 years on the date of the accident. There is nothing to indicate that he would have married at the age of 19 and, therefore, for the next few years atleast he would have spent his considerable income on the other family members i.e. parents and brothers. Taking an overall view of the matter, therefore, we are of view that in the facts and circumstances of this case, for the purpose of assessment of loss of dependency benefit the amount to be deducted should not be more than 50% and, therefore, the dependency benefit which claimants would have received would have been Rs.1,875/- per month i.e. Rs.22,500/- per annum. Considering the age of the deceased (19 years), it will be advisable to adopt the multiplier of 16 years which would bring the compensation for loss of dependency benefit to

Rs.3,60,000/-. Adding thereto, an amount of Rs.20,000/- as the loss to the estate, the claimants would be entitled to total compensation of Rs.3,80,000/-.

9. Since the Tribunal had already awarded Rs.1,08,000/-, the respondents would be liable to pay the additional amount of Rs.2,72,000/- with interest at the rate of 9% per annum from the date of the claim petition till the deposit with proportionate costs. The additional amount shall be deposited before the Tribunal by 5th October, 2006.

The appeal is accordingly partly allowed in the aforesaid terms.

10. Upon deposit of the amount, the Tribunal shall invest a sum of Rs.4,00,000/- in fixed deposits with a nationalized bank near the residence of the original claimants for a period of five years with usual conditions about prohibition against premature encashment/encumbrance of the deposits with permission to the original claimants to withdraw interest periodically accruing on the fixed deposits. The balance amount shall be permitted to be withdrawn by the original claimants by account payee cheques.

[M.S. SHAH, J.]

[K.M. MEHTA, J.]

sundar/-